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RIGHTS OF THE VICTIMS IN THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The protection of fundamental rightshas became one of the European distinctive features. However, if the Council of Europe has been for years recognized as a main of the world's key players in this field, for the European Union this role seems to be rather new. The questions regarding protection of fundamental rights were certainly arisen both in the Treaties and in the secondary law, however they were not very visible. The things have rapidly changed after adoption of the Lisbon Treaty and of the Charter**o**f Fundamental Rights of the European Union (hereinafter referred to as "the Charter"). The latter very soon has been promoted as a major benchmark of human rights' protection, almost comparable to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "ECHR" or "the Rome Convention").

According to the Charter's preamble, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity. It is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. To this end, EU found it necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in the Charter.

This documentreaffirms the human rights as they resultfrom the constitutional traditions and international obligations common to the Member States, the ECHR, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of EU and of the European Court of Human Rights.

The standards enshrined in the Charter have been generallyadopted in favor of any individual, not only a victim of crime. Some of them, however, seem to be especially relevant from the point of view of the person affected by the criminal activity. They will be described under the 1st part of this essay.

The Charter encompasses also some provisions which have been tailored for the persons involved into criminal proceedings, with respect to their specific needs during it. Among these principles there are some, which are dedicated directly to the victims of crime. They will be covered by the 2ndpart of the article.

1. General rights

1.1. Dignity

Article 1 relates to the protection of human dignity. It is enshrined that human dignity is inviolable and it must be respected and protected.

This right "number one", technically fallen outside any precise definition, is not only a right in itself but constitutes the real basis of other, derivative fundamentalrights. The 1948 Universal Declaration of Human Rights describes human dignity in its preamble:

> "Whereas recognition ofthe inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation offreedom, justice and peace in the world."

Since the times of European Renaissance, thru all the ages,human dignity has been regarded as a morally related issue. Notwithstanding, in our times it is more and more concerned as covered also other aspects of human life, including man's biology. The Council of Europe invoked dignity in its Oviedo Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicineof 1997. Some of the preamble'srecitals contains following statements:

> "Convinced of the need to respect the human being both as an individual and as a member of the human species and recognizing the importance of ensuring the dignity of the human being;
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> Conscious that the misuse of biology and medicine may lead to acts endangering human dignity;
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> Resolving to take such measures as are necessary to safeguard human dignity and the fundamental rights and freedoms of the individual with regard to the application of biology and medicine.".

In the same context human dignity is invoked as a safeguard but also a subject of the legal protection in the latest Council of Europe instrument, to wit Convention against Trafficking in Human Organs of 2015. One of its preamble's recital reads as follows:

> "Considering that the trafficking in human organs violates human dignity and the right to life…".

This broad understanding of human dignity has been also adopted in EU. In case C-377/98 Netherlands v EuropeanParliament and Council, the Court of Justice confirmed that a fundamental right tohuman dignity is part of Union law, and endorsed its comprehending as the factor relating to all aspects of human life, including such apparently remote fields like the

need to ensure that the human body effectively remains unavailable and inalienable for commercial and industrial purposes. Actually, this new perspective can be relevant for the victims of crime, despite that the notion in question has been usually understood as a source of protection against humiliation, threat or physical and psychological violence. Of course this second, more traditional understanding has not been terminated, thus the term "dignity" must be deliberated in comprehensive and holistic way.

In the context of the Charter it results that none of the rights laid down in it may be used to harm the dignity of another person, and that thedignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected,even where a right itself is restricted.

1.2. Security

Article 6 provides for the right to liberty and security, including also a personal security, which can be especially important with respect to the victims. Accordingly with this Article, everyone has the right to liberty and security of person.

The rights in Article 6 are the same as guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5. The latter concerns mainly the rights of persons under detention or arrested. However the notion "security" has definitely broader meaning and doubtlessly may regards also other persons, inter alia victims of crime. It seems that this right in such sense has been also reflected in the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L UE 315 of 2012, p. 5, hereinafter referred to as the Directive 2012/29/EU). In its preamble, recital 52 says that the measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders. This concept, developed in Article 18, shall be regarded directly with the commented provision of the Charter. The obligation for the Member States to protect victims and their family members from secondary and repeat victimization, from intimidation and retaliation, concerns the risk of emotional or psychological harm as well as the physical protection.

The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles 82, 83 and 85 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFUE"), notably to define common minimum provisions as regards the categorization of offences and punishments and certain aspects of procedural law.

1.3. Property

According to Article 17(1) of the Charter, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of hispossessions except in the public interest and subject to the conditions provided for by law and by the general principles ofinternational law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deemsnecessary to control the use of property in accordance with the general interest or to secure the payment of taxes or othercontributions or penalties."

According to the official Explanations to the Charter (OJ C 303 of 2007, p. 17, hereinafter referred to as "the Explanations"), this is a fundamental right common to all national constitutions. The wording hasbeen updated but, in accordance with Article 52(3) of the Charter, the meaning and scope of the right are the same as those of the rightguaranteed by the ECHR and the limitations may not exceed those provided for there.

This specific right has been recognized on numerous occasions by thecase-law of the Court of Justice, initially in the Hauerjudgment of13 December 1979. It should be however mentioned, that in the Luxembourg Court's jurisprudence it has consistently been held that in Union law this fundamental rights do not have absolute protection, but must be viewed in relation to their function in society. Consequently, its exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Union and do not constitute a disproportionate and intolerable interference, impairing the very substance

of the right guaranteed. Thus, for case-by-case assessment of the commented right and its alleged breach, the key factor is the principle of proportionality, as one of the general principles of EU law which requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (see cases C-84/95 Bosphorus, T-202/12Bouchra Al Assad and joined cases C-539/10 and C-550/10 Al-Aqsa v Council and Netherlands v Al-Aqsa,).

From the point of view of victim protection this right could be analyzed in the context of the specific instrument of the EU cooperation in criminal matters, namelythe Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ UE L 76 of 2005, p. 16). This instrument applies to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.According to its Article 1(b)(ii) for the purposes of this Framework Decision "financial penalty" shall mean also the obligation to pay compensation imposed for the benefit of victims. However its Article 13 states that the monies obtained from the enforcement of decisions shall accrue to the executing State. It means that, when such financial penaltyis transferred to other Member State in purpose of its execution, all the money obtained in this way go directly to the budget of the executing state, not to the victim who has a clear legal title to it. Actually it seems just deprivation of the possession in the meaning of Article 17 of the Charter, as there is apparently no interest pursued by the Union behind such construct. Oppositely, introducing and upholding this provision surely does constitute a disproportionate and intolerable interference, hampering the very substance of the fundamental right in question. And last but not least, this solution is apparently contrary to the concept lied behind Article 16 of the Directive 2012/29/EU, providing the right to decision on compensation from the offender in the course of criminal proceedings and obliging Member States to deliver such a decisionin purpose of effective compensation.

1.4. Equality before the law

Article 20 provides that everyone is equal before the law.This Article corresponds to a general principle of law which is included in all European constitutions. Within EU law this principle is obviously elder than the Charter itself. It was recognized by the unitary and

coherent jurisprudence of the Court of Justice (seecases283/83 Racke, 203/86 Spainv Council,C-15/95 EARL, C-292/97 Karlsson, C-351/92 Graff v Hauptzollamt Köln-Rheinau, C-2/92 The Queen v Ministry of Agriculture, Fisheries and Food ex parte Bostock).In these indicative judgements it has been cleared that any provisions of theEuropean law, the aim of which is to prohibit discrimination in the field of the common EU policy, is merely a specific expression of the general principle of equaltreatment, a fundamental principle of Community law, which requires that comparablesituations are not to be treated differently and different situations are notto be treated alike unless such treatment is objectively justified. The Court has also consistently held that, since Member States are bound by the fundamental principles of Community law when they implement Community legislation, that rule applies to national provisions, which determine, pursuant to the Community legislation, various fields of life.

1.5. Non-discrimination

Article 21 sets forth the prohibition of any discrimination. The prohibition is of absolute nature if concerns discrimination based on ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (paragraph 1). This paragraph should be read together with Article 19 TFUE which confers power on the Union to adopt legislative acts, including harmonization of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in Article 21(1) of the Charter does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article 19 nor the interpretation given to that Article.

On the other hand, due to the specificity of nationality as a differentiation factor, the prohibition on this ground is relative, in the sense that it shall be executed within the scope of application of the Treaties and without prejudice to any of their specific provisions (paragraph

2). This provision strictly corresponds to the first paragraph of Article 18 TFUE and must be applied in compliance with that Article.

The principle of non-discrimination on grounds of nationality, applicable as it is within the scope of the EC Treaty, is regarded in the doctrine of EU law as clearly developing into a core component of European Union citizenship. The moving European citizen is protected from all nationality-based discrimination, whatever the motive for moving. This concept of EU citizenship, and its underlying rationale, will no doubt pull at the Charter, and there will be pressure to confer all the Charter rights on the moving European citizen (Eeckhout P., p.945).

This intuition, given more than 10 years before, has been fully confirmedby the development of EU law within the area of protection of the victims. The Directive 2012/29/EU provides for that Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim'scitizenship or nationality (recital 10 of the preamble). This idea has been developed in Article 17, which obliges Member States to ensure that their competent authorities can take appropriate measures to minimize the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organization of the proceedings. This specific rule should be comprehended as a direct result of aforementioned non-discrimination principle.

1.6. Protection of children

Article 24 (2)of the Charter stipulates that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. The Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States. By the way it must be considered that a child means any person below the age of 18 years (Article 2(a) of Directive 2012/29/EU). Obviously, the system regards also the protection of the child’s interests within criminal proceedings, both when the child is a perpetrator and a victim.

If concern the latter, the attention must be paid to Regulation (EU) no. 1382/2013 of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020. In accordance with recital 12 of its preamble, pursuant to Article 3(3) of the TEU, Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child, the Programme should support the protection of the rights of the child, including the right to due

process, the right to understand the proceedings, the right to respect for private and family life and the right to integrity and dignity. The Programme should aim, in particular, to increase child protection within justice systems and access to justice for children, and should mainstream the promotion of the rights of the child in the implementation of all of its actions.This principle can be regarded in respect of the child being the party to the proceedings generally as well as he or she being the victim.

Article 5 of this Regulation says that the Programme shall seek to promote inter alia the rights of the child, also by means of childfriendly justice, which must mean also promoting child victim friendly justice as well.

The aforementioned principle has been expressly reflected in the Directive 2012/29/EU. Its Article 1(2) reads as follows:

> "Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child."

Doubtlessly the child victim should be in principle always deemed a vulnerable one in the meaning of this Directive. Therefore he or she could enjoy specific protection measures as provided in Article 23. There are, inter alia, special regime of interviews, carried out in the premises adapted for that purpose, conducted by duly trained professionals and – unless this is contrary to the good administration of justice – by the same persons. If concern court proceeding, the special measures consist of avoiding visual contact between victims and offenders, being heard in the courtroom without being present and without the presence of the public or avoiding unnecessary questioning concerning the victim's private life. It must be pointed that the Directive does not oblige the Member States to use all these measures in any case of victim's vulnerability, but to provide their availability in need. However, regarding the child victim, this is to believe that in the specific case the judicial authority should at least thoroughly consider using the measures in question if not use them, fully or partly, automatically. In practical terms, especially if the child victim is heard as a witness, non-use of these special measures could be regarded a basis for challenging a final decision, as delivered in consequence of breaching the procedural rules.

Last but not least, the aforementioned principle shall be considered the benchmark of utmost importance in respect of the offences specifically addressed against a child, namely pedophilia, sexual abuse or other crimes against child's physical or mental integrity. One of the most important legal means in this field is the Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ. L. UE 335 of 2011, p. 1). Its 1st recital reads as follows:

> "Sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter of Fundamental Rights of the European Union".
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> Then again, in recital 6:
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> "Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose."

These provisionsreflect the principle enshrined in the Charter, having although regard to the legal background as worked out thru the years of activity of different public bodies in this respect. Furthermore, the Directive 2011/92/EU sets down the subject of the fundamental right in question, saying that the measures to protect child victims should be adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a

result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.

2. The rights specific for justice

The fundamental rights relevant within administration of justice are provided for in Title IV of the Charter. They are mostly adopted as the safeguards for suspects and accused persons; however one is also relevant in respect of the position of victim. This is to wit Article 47, providing 4different measures of utmost importance for victims of crime acting as the parties to the criminal proceedings.

2.1. Effective remedy

Article 47(1) stipulates the right to an effective remedy, saying that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. This rule, both if concern its matter and its wording, is based on Article 13 of the ECHR, which reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before anational authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in the Union law the protection is more extensive since it guarantees the right to an effective remedy before a court.

As many of the fundamental rights provided for in the Charter, the right to an effective remedy has been primarily recognized by the Court of Justice. In case 222/84Johnston, concerning the discrimination issues, the Court said that the requirement of judicial control stipulated by secondary EU law reflects a generalprinciple of law which underlies the constitutional traditions common to theMember States. In this light all persons have the right to obtain an effectiveremedy in a competent court against measures which they consider to be contraryto the principles laid down in the Union law. It is for the Member States to ensure effective judicial control as regardscompliance with the applicable provisions of EU law and of national legislationintended to give effect to the rights for which the Union law provides. In case 222/86 Heylens, the Court decided that with respect to fundamental rights confers in the Treaties, the existenceof a remedy of a judicial nature againstany decision of a national

authorityrefusing the benefit of that right isessential in order to secure for the individualeffective protection for his right (see also case C-97/91 Borelli). According to the Court, that general principle of the Unionlaw also applies to the Member States when they are implementing the Union law. The inclusion of this precedent in theCharter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rulesrelating to admissibility for direct actions before the Court of Justice of the European Union. Article 47 (1) applies to the institutions of the Union and of MemberStates when they are implementing the Union law and does so for all rights guaranteed by it.

It might be needed to mention that providing the right to effective remedy on EU level does not itself determine the need of its adopting and specifying on the same level. Oppositely, it is left to the domestic systems according to the principle of the procedural autonomy of the Member States. This principle results from the absence of a comprehensive set of EU procedural rules governing the enforcement of rights derived from EU law at Member State level on the one hand and the correlative duty of each Member State to provide, in accordance with the principle of sincere cooperation, an adequate procedural framework for their enforcement on the other. This duty is quite obviously closely connected with the full effectiveness of EU law and can also be seen as a manifestation of the general principle of effective judicial protection (Beysen E., Trstenjak V., p. 95).

See also cases C-415/11 Aziz, C-539/14Morcillo and Garcia, T-593/11 Al-Chihabi, C-562/13 Abdid,in which the Court decoded the feature of "effectivity" of the legal remedy.

2.2. Fair trial and legal assistance

Article 47 (2) provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

The second paragraph obviously corresponds to Article 6(1) of the ECHR which reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fairand public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall bepronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the

parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Accordingly with the Explanations to the Charter, in the Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law. Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

It is settled case-law of the Court that the right to be heard constitutes relevant element of the rights of the defense, set forth among the fundamental rights forming an integral part of the European Union legal order. However, the Court has held that fundamental rights, such as observance of the rights of the defense, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not constitute, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (see case C-383/13 M.G, N.R., C-28/05 Dokter and Others, joined cases C-584/10 P, C-593/10 P and C-595/10 P Commission and Others v Kadi).

In joined cases C-129/13 and C-130/13Kamino and Datemathe Court recalled the objective pursued by the principle of the right to be heard. According to the Court, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before the decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favor of the adoption or non-adoption of the decision, or in favor of its having a specific content. The right to be heard guarantees every person the opportunity to make known his views effectively during a procedure and before the adoption of any decision liable to affect his interests adversely.That right is required even where the applicable legislation does not expressly provide for such a procedural requirement. Accordingly, in cases C-349/07 Sopropé and C-277/11 M.M., the Court added that respect for the rights of the defense implies that, in order that the person entitled to those rights can be regarded as having been placed in a position in which he may effectively make known his views, the authorities must take note, with all requisite attention, of the observations made by the person or undertaking concerned,

examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision (see also cases C-287/02 Spain v Commission, C-141/08 P Foshan ShundeYongjian Housewares & Hardware v Council, C-27/09 P France v People's Mojahedin Organization of Iran, C-269/90 TechnischeUniversitätMünchen).

This fundamental right strictly corresponds with Article 10 (1) of Directive 2012/29/UE, which reads as follow:

> "Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity".

According to the second sentenceof Article 47 (2), everyone shall have the possibility of being advised, defended and represented.Although this right is primarily addressed to the suspect or accused person, it can show relevance also with respect to victim of crime, especially when he or she acts as a party to the criminal proceedings. This fundamental right itself has not been yet duly recognized and interpreted either by the Court of Justice or by the doctrine. Technically it is considered one of the rights of defense and an element of the right to fair trial.

2.3. Legal aid

According to Article 47 (3), legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.With regard to the third paragraph, it should be noted that in accordance with the case-law of the ECHR, provision should be made for legal aid where the absence of such aid would make it impossible to ensure aneffective remedy (ECHR judgment of 9 October 1979, Airey, Series A, Volume 32, p. 11). There is also a system of legalassistance for cases before the Court of Justice. However, for practitioners the most interesting issue is implementation of this fundamental right in domestic cases.

It should be useful to mention that, as far as victims are concerned, this righthas been specified in the Directive 2012/29/EU. Its Article 13 provides that Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

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